

Before the
Federal Communications Commission
Washington, D.C. 20554

RECEIVED
APR 14 1997

Federal Communications Commission
Office of Secretary

In the Matter of)

)
Amendment of Section 73.202(b)
Table of Allotments,
FM Broadcast Stations
(Mullins and Briarcliffe Acres,
South Carolina)

)
)
)
)
)
)

MM Docket No. 97-72
RM-9017

TO: Chief, Allocations Branch

DOCKET FILE COPY ORIGINAL

COMMENTS OF
ATLANTIC BROADCASTING CO., INC.

Atlantic Broadcasting Co., Inc. ("Atlantic"), by its attorneys hereby respectfully submits its Comments in response to the above-captioned *Notice of Proposed Rulemaking (N.P.R.M.)*, DA 97-339, released February 21, 1997. In regard thereto it is stated as follows:¹

Atlantic is the licensee of WWSK(FM), Channel 296C2, Mullins, South Carolina. Atlantic seeks to modify the Table of FM Allotments to change the allotment of Channel 296C2 from Mullins to Briarcliffe Acres, South Carolina.

The *N.P.R.M.* reached the following conclusions regarding the proposed reallocations:

1. Briarcliffe Acres is separated by a distance of six kilometers (4 miles) from the Myrtle Beach Urbanized Area.

¹ These Comments are timely filed by April 14, 1997.

2. Reallocation of WWSK(FM) to Briarcliffe Acres will not increase the percentage of 70 dBu signal that WWSK(FM) presently provides to the Myrtle Beach Urbanized Area.

3. Reallotment of Channel 296C2 to Briarcliffe Acres will provide that community with its first local service,² without depriving Mullins of its sole local aural transmission service.

In light of this, the issue the FCC seeks addressed in these Comments is whether the proposal should be considered a proposal to serve Briarcliffe Acres or whether Briarcliffe Acres should be credited with all of the local transmission services licensed to the Myrtle Beach Urbanized Area. In this regard it is significant to note that this proposal will not increase the 70 dBu signal coverage to the Myrtle Beach Urbanized Area by one scintilla, since the reallotment of Channel 296C2 does not require Atlantic to relocate the WWSK transmitter site.

To meet the issue the guiding legal precedent is the standards set forth in *RKO General (KFRC)*, 5 FCC Rcd 3222 (1990) (*KFRC*); *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988) (*Tuck*); and *FM Assignments - Semora, North Carolina*, 5 FCC Rcd 934 (1990) (*Semora*). In response to these issues, Atlantic submits herewith the supplemental statement³ of Edgar Dyer, Town Attorney for Briarcliffe Acres.

² A station providing a local aural service to a community has a particular duty to address the needs and interests of the residents of that community.

³ Mr. Dyer's initial statement of November 4, 1996, is already a part of the record in the *N.P.R.M.* In it, Mr. Dyer expressed the town's support for its own local radio station.

Mr. Dyer's statement shows that:

1. Briarcliffe Acres was originally developed as a retirement community and largely remains so today. Thus, while some of the newer residents work in Myrtle Beach, they also work in the separate communities of North Myrtle Beach and Conway.
2. There are no media of mass communications that particularly cover the needs and interest of the residents of Briarcliffe Acres.
3. The residents as well as the community leaders of Briarcliffe Acres definitely consider themselves as residents of a separate community which is not part of Myrtle Beach.
4. Briarcliffe Acres is not only an incorporated community, but it also has an elected mayor and council.
5. Because of land use restrictions contained in local property deeds there are no commercial establishments in Briarcliffe Acres.
6. Finally, and most significantly in showing the lack of interdependence with Myrtle Beach, is the fact that Briarcliffe residents, except for water, use neither Myrtle Beach nor Horry County facilities for their municipal services. Briarcliffe Acres has its own police department and receives other municipal services, such as fire protection, trash removal, etc., by hiring private contractors.

As the Commission found in *Semora* at 935, a community need not possess every facet of the *Tuck* test to constitute a community for the purpose of being entitled to a first local service. *Semora* lacked a local government and had no police

department, both of which are present in Briarcliffe Acres. Semora did possess a number of commercial outlets, but these are precluded by law in Briarcliffe Acres. The essential element in Briarcliffe Acres of separate community status is that the residents have determined to not only be self-governing by electing a mayor and counsel, but also to be independent by paying for their own municipal services such as police, trash hauling, etc.

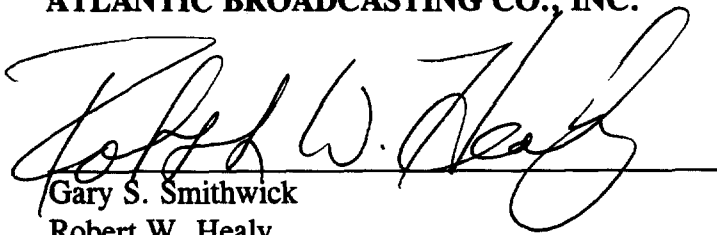
If the FCC allots Channel 296C2 to Briarcliffe Acres, then Atlantic will promptly file an application to modify its license to change the community of license and upon grant will construct the modified facilities.

In light of the above the Commission should adopt Atlantic's proposal, and allot Channel 296C2 to Briarcliffe Acres, South Carolina, and modify the license of WWSK to operate on Channel 296C2 at Briarcliffe Acres, South Carolina.

Respectfully submitted,

ATLANTIC BROADCASTING CO., INC.

By:


Gary S. Smithwick
Robert W. Healy
Its Attorneys

SMITHWICK & BELENDIUK, P.C.

1990 M Street, N.W.

Suite 510

Washington, D.C. 20036

(202) 785-2800

April 14, 1997

EDGAR DYER
ATTORNEY AT LAW
118 Citadel Drive
Conway, South Carolina 29526

(803) 347-3161 office
(803) 347-3040 home

March 18, 1997

Gary S. Smithwick, Esq.
Smithwick & Belendiuk, P.C.
1990 M Street, N.W. Suite 510
Washington, D.C. 20036

Re: Briarcliffe Acres, S.C. rulemaking - WWSK

Dear Mr. Smithwick:

Responding to the FCC request for *Tuck* factor information, please be advised as follows:

(1) A significant portion of the population in Briarcliffe Acres is retired. It was originally planned as a retirement community. Those who work do so in nearby locales, such as Myrtle Beach, North Myrtle Beach, and Conway.

(2) Briarcliffe Acres does not have a newspaper or any other media organ that covers the community's local needs and interests. An occasional article appears in the *North Myrtle Beach Times*.

(3) The leaders (mayor and council) of Briarcliffe Acres definitely perceive the Town as separate from Myrtle Beach. The Town's residents have such a perception, as well, since the Town's boundaries are distinct and there are three gated entrances only.

(4) Briarcliffe Acres is a duly incorporated South Carolina municipality, since 1976, and has a Mayor and Council.

(5) Briarcliffe Acres does not have its own telephone book or zip code.

(6) Briarcliffe Acres has no commercial establishments, health facilities, transportation systems, or any other commercial activities. The Town is, with the exception of a Lutheran church, completely residential. A blanket covenant restricts the entire Town to residential use only, the church and a wilderness area being the only exceptions.

(7) Briarcliffe Acres and Myrtle Beach are part of the same advertising market, as they are both within the same Standard Metropolitan Statistical Area (SMSA).

(8) Briarcliffe Acres has its own police department and provides other amenities to its residents. These amenities are: garbage collection, by contract with a private hauler; fire protection, by contract with the City of North Myrtle Beach; and landscaping/maintenance of public property, by contract with a private contractor. The only service it receives from the City of Myrtle Beach is water, by contract.

Sincerely,



Edgar Dyer
Town Attorney
Town of Briarcliffe Acres, S.C.